

OAKWOOD LAKE WATER DISTRICT

REGULAR MEETING MINUTES OF OCTOBER 26, 2021

HELD REMOTELY VIA ZOOM¹

A Regular Meeting of the Oakwood Lake Water District was held remotely, via Zoom, on Tuesday, October 26, 2021 at 7:00 p.m.

1. CALL TO ORDER; ROLL CALL. The meeting was brought to order at 7:00 p.m. by President Gene Oliver. Secretary Knight took roll call, and the following Directors and staff were remotely present:

Gene Oliver, President
Steve Marino, Vice President
Nelson Bahler, Director
Tim Smith, Director
Scott Anderson, Director
Jean Knight, District Secretary
Doug Coty, Legal Counsel
Bert Michalczyk, District Engineer

Others Present Were:

Lynn Wichert
Andrew Hernandez
Harv Gill
Jim Idleman
Unidentified Members of the Public

Absent Were:

None

2. Consider approval of resolution adopting findings in compliance with Brown Act to provide for continued virtual meeting option.

The resolution being proposed, Resolution 2021-04, is in order to comply with the Brown Act, California Government Code section 94543(e), which provides for conducting meetings virtual or by other remote means. The resolution contains findings regarding the risk to public health and provides safeguards to ensure that the public is afforded the fullest opportunity to participate in the District Board and Committee meetings. The Directors may participate remotely, and those remote locations need not be publicly noticed, nor shall they be required to be open to the public. The public shall be allowed to comment via remote or

¹ Directors will participate in this meeting remotely pursuant to the authorization of California Government Code section 94543(e). No physical meeting location will be provided.

teleconference means, as well as in writing prior to the Board meeting. These steps are taken to ensure that the Board meetings remain open to the public to the fullest extent possible while maximizing protection of the public.

If approved, the Resolution shall be effective for no more than 30 days and shall require extension at the time of the November Board meeting to continue providing remote meeting options under the modified Brown act requirements. Further details of this agenda item can be found in the agenda materials on pages 5 and 6.

At the end of this discussion, Director Oliver asked if there were any questions. Director Anderson had a question about a special provision related to the governor's order that when there are public comments made virtually, is there any difference within the remote (virtual) meeting? Mr. Coty responded that the only difference is that the order expressly states when there is a loss of the technical connection, the meeting must be paused until the connection is restored. After this question was responded to, there were no further questions from the directors or the public and therefore:

It was moved, seconded (S. Anderson/S. Marino) roll call² by Secretary Knight was responded to as follows: Gene Oliver; Aye; Steve Marino; Aye, Nelson Bahler; Aye, Tim Smith; Aye, Scott Anderson; Aye and unanimously carried by the Board of Directors of the Oakwood Lake Water District that Resolution No. 2021-04, A Resolution of the Board of Directors of the Oakwood Lake Water District Ratifying the Proclamation of a State of Emergency by Governor Newsom on March 4, 2020 and Authorizing Remote Teleconference Meetings of the Legislative Bodies of the Oakwood Lake Water District for the Period from October 26, 2021 through November 25, 2021 Pursuant to Brown Act Provisions, be approved.

4. PUBLIC COMMENT *(The Board President took this item out of order ahead of Item 3 so as to accommodate members of the public who were present)*

- a. Audience members may address the Board on any item pertaining to Oakwood Lake Water District's jurisdiction not appearing on the agenda. Please limit each presentation to five minutes.

Harv Gill: Mr. Gill reported that he represents the buyers of what the District terms the "Beck Property" at 3789 W. Woodward. He stated that the buyers are planning to develop the property to include various commercial uses including a nice sit-down restaurant, coffee shop and a hair and nail salon. He noted that there are three District utility lines that are going across the property. These lines may conflict with development plans. Additionally the District holds a blanket easement over the entire

² All actions taken at this meeting will require a roll call vote. The Secretary will perform all roll calls.

property for utility purposes. The buyers would like the District to relinquish its blanket easement and allow the possible relocation of the utility lines (and associated easements) so as to allow their project to be built. The buyers will be requesting a will serve letter from the District as part of their County application. He requested that these matters be placed on a future Board agenda. The Board asked Mr. Michalczyk to work with the buyers to start the process and to bring the matter back to the Board at the appropriate times.

b. Written correspondence received via District email

Mr. Michalczyk reported he the District received 3 emails today at various times all of which were from the owners of two deed restricted properties and each were requesting that the District lift the deed restrictions on Lots 32 and 33 (on Calesetta). Mr. Michalczyk said that this matter will be discussed as part of Item 6 on the agenda.

President Oliver announced that the Board would be going into closed session for agenda Item 3. The regular meeting conference was then discontinued so that the closed session could be held. It was announced that the regular meeting would be available at 8:00 p.m. for public attendees to rejoin. The closed session began at 7:15 p.m.

3. CLOSED SESSION:

- a. Conference with Legal Counsel – Anticipated Litigation; Significant exposure to litigation pursuant to Subdivision (b) of Government Code Section 54956.9: *(1 Potential Case)*
- b. Conference with Legal Counsel – Consider Initiation of Litigation – as authorized pursuant to Paragraph 4 of Subdivision (d) of Government Code Section 54956.9: *(1 Potential Case)*

A Closed session was held on the above items. The Board returned to open session at 8:05 p.m. after waiting for public attendees to rejoin the meeting. There was no reportable action.

5. CONSENT ITEMS:

The following items can be acted on in one consolidated motion as recommended or may be removed from Consent and separately considered at the request of any Director.

- a. Approve Minutes for Regular Meeting of September 28, 2021
- b. Accept Financial Reports for September 2021
- c. Receive Capital Projects Status Report for September 2021
- d. Receive Fiscal Year Goals Status Report for August 2021
- e. Infrastructure Finance and Construction Agreement Status Report for September 2021
- f. Time Schedule Order Status Report for September 2021
- g. Manteca Wastewater Services Agreement Status Report for September 2021
- h. Approve Amendment 2 to Task Order 2 to the Professional Services Agreement between Oakwood Lake Water District and Dewberry | Drake Haglan for On-Call Construction

Management Services Related to the Manteca Option Facilities Project 9000.42 in an amount of \$90,316

It was moved/seconded (S. Marino/T. Smith), roll call by Secretary Knight was responded to as follows: Gene Oliver; Aye; Steve Marino; Aye, Nelson Bahler; Aye, Tim Smith; Aye, Scott Anderson; Aye and unanimously carried by the Board of Directors of the Oakwood Lake Water District a. The minutes for the Regular Meeting of September 28, 2021 were approved; b. The Financial Reports for September, 2021 were accepted; c. The Capital Projects Status Report for September 2021 was received; d. The Fiscal Year Goals Status Report for September 2021 was received; e. The Infrastructure Finance and Construction Agreement Status Report for September 2021 was accepted; f. The Time Schedule Order Status Report for September 2021 was accepted; g. The Manteca Wastewater Services Agreement Status Report for September was received; h. Amendment 2 to Task Order 2 to the Professional Services Agreement between Oakwood Lake Water District and Dewberry | Drake Haglan for On-Call Construction Management Services Related to the Manteca Option Facilities Project 9000.42 in an amount of \$90,316 was approved.

6. ACTION/ ITEMS:

- a. Manteca Option Facilities Status Report, Compliance Status of the Terms of Amendment 6 and Consider Further Actions
 - i. Receive report of status of construction of the Manteca Option Facilities. District Engineer Mr. Michalczyk summarized the material included in the Staff Report related to the status of construction of the Manteca Option Facilities project updating that with information from the weekend storm event. He highlighted that:
 - The force main has been essentially completed and could be operational but that pavement restoration has not yet been scheduled and is becoming a concern to the City of Manteca.
 - Pump station work at the wastewater treatment plant is still in progress and quite a bit of work remains before those facilities are operational
 - The electrical tie-in to PG&E occurred last week which was a significant milestone; that connection is now powering the existing wastewater treatment plant and will power the Manteca Option Facilities.
 - The 21-inch gravity sewer line across the Meritage property was accepted by the Manteca City Council meaning that there are no longer any property issues at the eastern terminus preventing the force main from being connected to Manteca.

- The recent heavy rains will have a significant impact on near term construction activities. Almost all open excavations at the wastewater treatment plant were flooded and saw significant damage to trench sidewalls. Additionally some electrical facilities under construction were flooded. The site has become virtually unworkable until the soil dries out which might take 7 to 10 days.

While the contractor's official schedule shows a December 28, 2021 completion date that schedule was prepared prior to the storm. Mr. Michalczyk's professional opinion is that routine pumping to Manteca will now likely not commence until January 2022 which is perilously close to the January 31, 2022 date mandated by the Regional Water Quality Control Board.

ii. Receive report and discuss compliance and terms of Amendment 6 to Wastewater Infrastructure and Finance Agreement between District and Oakwood Ventures.

Mr. Michalczyk summarized the status of Lafferty's compliance with the conditions precedent to the release of the Third Tranche of ten (10) will serve letters and the District's release of the deed restricted lots all as previously agreed to by Lafferty in Amendment 6. These are as follows:

- Financial: On October 21, 2021 Lafferty remitted payment to the District which payment included all arrearages; that payment made Lafferty then current on payments owed the District.
- Fees: On October 8, 2021 Lafferty remitted payment on all fees due prior to the issuance of the Third Tranche of will serve letters.
- Delivery of Key Equipment: While this condition is not fully satisfied the District Engineer's opinion is that what has been accomplished is for practical purposes equivalent to the intent of this condition. The exceptions are (a) the precast vault for the pig receiving station which is presently located at the supplier's yard - rather than at either the subcontractor's yard or the job site – this is acceptable because of the size and weight of the unit which renders it impractical to move to one of the specified locations and later to move again to the installation site and (b) the metering manhole for the MHP meter which was only recently ordered by the contractor and which will not be delivered until an estimated January 2022 timeframe – this is acceptable because it is not critical to the commencement of pumping to Manteca.
- Evidence of Payment To date Lafferty has provided only very limited and incomplete evidence of payment for the key equipment to each subcontractor and supplier. (Marques, Conco West and each supplier).
- Lien Releases To date Lafferty has provided only very limited and incomplete evidence of lien releases for the key equipment from each subcontractor and supplier. (Marques, Conco West and each supplier).

- iii. Consider further actions related to Amendment 6, including further amendment, modification, waiver, or continuation as-is. Mr. Michalczyk summarized that in accordance with Amendment 6 at this time he is neither authorized to release additional will serve letters nor to release the deed restrictions. For the sake of discussion he identified the following options that the Board may wish to consider:
- Status Quo – No action would constitute direction to continue to administer Amendment 6 as written;
 - Rescind Amendment 6 – this would eliminate the need for payment and lien release evidence and effectively revert back to the issuance of will serve letters upon substantial completion; such a rescission would need to be agreed to by Lafferty;
 - Modify some or all of the conditions precedent to the release of the will serve letters; this would require a renegotiation of Amendment 6 and would need to be agreed to by Lafferty;
 - Unilateral approve the full or partial release of the will serve letters – this can be done unilaterally by the Board by its waiver of its enforcement of some or all of the conditions precedent identified in Amendment 6;
 - Conditional waiver of the conditions precedent upon delivery of equipment to the job site; this would ensure that the District has the key equipment in-hand and on its property if it needs to take over and finish the project by acceptance of Lafferty's assignment of the Marques agreement;

Discussion followed amongst the Directors and subsequently,

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The District Engineer clarified that he understood that the motion as approved would trigger his release of the Third Tranche of ten will serve letters and would also

³ The conditions precedent thus waived are "...Oakwood furnishing evidence satisfactory to the District Engineer of payment to each manufacturer or supplier, subcontractor at each tier and contractor for each item of the Key Material and Equipment together with the receipt of unconditional releases from each manufacturer or supplier, subcontractor at each tier and contractor for each item of the Key Material and Equipment...".

effectively act to empower him to release the current three deed restrictions on the homes recently completed on Calesetta. The Board did not disagree.

7. STAFF REPORTS:

a. Director Reports

No reports were made

b. Committee Report (Ad-Hoc Chiavari Landscape Replacement Water Committee)

No report was made; no Committee meeting was held

c. Staff Reports (District Engineer, Legal Counsel)

No reports were made.

8. CLOSED SESSION:

a. Conference with Legal Counsel – Anticipated Litigation; Significant exposure to litigation pursuant to Subdivision (b) of Government Code Section 54956.9: (*1 Potential Case*)

b. Conference with Legal Counsel – Consider Initiation of Litigation – as authorized pursuant to Paragraph 4 of Subdivision (d) of Government Code Section 54956.9: (*1 Potential Case*)

The closed session identified as Agenda Items 8a and 8b was not held.

7. ADJOURN

The meeting was adjourned at 8:20 p.m.

The Agenda for this meeting was posted in a sign board in front of the Oakwood Shores Clubhouse, 1699 Bella Lago Way, Manteca, CA at least 72 hours preceding the meeting.

Respectfully Submitted,



JEAN L. KNIGHT
District Secretary